

SENATE BILL 1071

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0lr3527
CF HB 416

By: **Senator Colburn**

Introduced and read first time: March 2, 2010

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Health Insurance – Definition of Bona Fide Wellness Program**

3 FOR the purpose of clarifying that certain bona fide wellness programs include a
4 program that requires membership and routine exercise at a health club or
5 fitness center; and generally relating to health insurance and bona fide wellness
6 programs.

7 BY repealing and reenacting, with amendments,
8 Article – Insurance
9 Section 15–509
10 Annotated Code of Maryland
11 (2006 Replacement Volume and 2009 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article – Insurance**

15 15–509.

16 (a) (1) In this section the following words have the meanings indicated.

17 (2) (I) “Bona fide wellness program” means a program that is
18 designed to:

19 [(i)] 1. promote health or prevent or detect disease or illness;

20 [(ii)] 2. reduce or avoid poor clinical outcomes;

21 [(iii)] 3. prevent complications from medical conditions;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 [(iv)] 4. promote healthy behaviors; or

2 [(v)] 5. prevent and control injury.

3 (II) **“BONA FIDE WELLNESS PROGRAM” INCLUDES A**
4 **PROGRAM THAT REQUIRES MEMBERSHIP AND ROUTINE EXERCISE AT A HEALTH**
5 **CLUB OR FITNESS CENTER.**

6 (3) “Carrier” means:

7 (i) an insurer;

8 (ii) a nonprofit health service plan;

9 (iii) a health maintenance organization; or

10 (iv) a dental plan organization.

11 (4) “Health factor” means, in relation to an individual, any of the
12 following health status–related factors:

13 (i) health status;

14 (ii) medical condition;

15 (iii) claims experience;

16 (iv) receipt of health care;

17 (v) medical history;

18 (vi) evidence of insurability; or

19 (vii) disability.

20 (5) “Incentive” means:

21 (i) a discount of a premium or contribution;

22 (ii) a waiver of all or part of a cost–sharing mechanism, such as
23 deductibles, copayments, or coinsurance;

24 (iii) the absence of a surcharge;

25 (iv) the value of a benefit that otherwise would not be provided
26 under the policy or contract; or

1 (v) a rebate as permitted under § 27–210 of this article.

2 (b) (1) A carrier may provide reasonable incentives to an individual who
3 is an insured, a subscriber, or a member for participation in a bona fide wellness
4 program offered by the carrier if:

5 (i) the carrier does not make participation in the bona fide
6 wellness program a condition of coverage under a policy or contract;

7 (ii) participation in the bona fide wellness program is voluntary
8 and a penalty is not imposed on an insured, subscriber, or member for
9 nonparticipation;

10 (iii) the carrier does not market the bona fide wellness program
11 in a manner that reasonably could be construed to have as its primary purpose the
12 provision of an incentive or inducement to purchase coverage from the carrier; and

13 (iv) the bona fide wellness program does not condition an
14 incentive on an individual satisfying a standard that is related to a health factor.

15 (2) Notwithstanding paragraph (1)(iv) of this subsection, a carrier may
16 condition an incentive for a bona fide wellness program on an individual satisfying a
17 standard that is related to a health factor if:

18 (i) 1. all incentives for participation in the bona fide
19 wellness program do not exceed 20% of the cost of employee–only coverage under the
20 plan; or

21 2. when the plan provides coverage for family members,
22 all incentives for participation in the bona fide wellness program do not exceed 20% of
23 the cost of the coverage in which the family members are enrolled;

24 (ii) the bona fide wellness program is reasonably designed to
25 promote health or prevent disease, as provided under subsection (c) of this section;

26 (iii) the bona fide wellness program gives individuals eligible for
27 the bona fide wellness program the opportunity to qualify for the incentive under the
28 bona fide wellness program at least once a year;

29 (iv) the bona fide wellness program is available to all similarly
30 situated individuals; and

31 (v) individuals are provided a reasonable alternative standard
32 or a waiver of the standard as required under subsection (d)(1) of this section.

33 (c) A bona fide wellness program shall be construed to be reasonably
34 designed to promote health or prevent disease if the bona fide wellness program:

1 (1) has a reasonable chance of improving the health of or preventing
2 disease in participating individuals;

3 (2) is not overly burdensome;

4 (3) is not a subterfuge for discriminating based on a health factor; and

5 (4) is not highly suspect in the method chosen to promote health or
6 prevent disease.

7 (d) (1) A carrier shall provide a reasonable alternative standard, or a
8 waiver of the otherwise applicable standard, for obtaining the incentive for any
9 individual for whom it is:

10 (i) unreasonably difficult due to a medical condition to satisfy
11 the otherwise applicable standard; or

12 (ii) medically inadvisable to attempt to satisfy the otherwise
13 applicable standard.

14 (2) A carrier may seek verification, such as a statement from an
15 individual's health care provider, that a health factor makes it unreasonably difficult
16 or medically inadvisable for the individual to satisfy or attempt to satisfy the
17 otherwise applicable standard.

18 (3) (i) A carrier shall disclose the availability of a reasonable
19 alternative standard or a waiver of the otherwise applicable standard in all policy
20 forms pertaining to the bona fide wellness program.

21 (ii) A carrier may meet the disclosure requirements of this
22 paragraph by using the following language or substantially similar language:

23 "If it is unreasonably difficult due to a medical condition for you to achieve the
24 standards for the incentive under this program, or if it is medically inadvisable for you
25 to attempt to achieve the standards for the incentive under this program, call us at
26 (insert telephone number), and we will work with you to develop another way to
27 qualify for the incentive."

28 (e) (1) In determining if a carrier's bona fide wellness program meets the
29 requirements of this section, the Commissioner may request a review of the bona fide
30 wellness program by an independent review organization from the list compiled under
31 § 15-10A-05(b) of this title.

32 (2) The expense of the review of the bona fide wellness program by an
33 independent review organization shall be paid by the carrier, in the manner provided
34 under § 15-10A-05(h) of this title.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2010.